

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 11, 2005**

AGENDA ITEM NO.: [12](#)

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Option to Purchase Property on Jefferson Street**

RECOMMENDATION: After a public hearing, authorize the City Manager to sign the option agreement for the purchase of 1117, 1201, 1215, and 1221 Jefferson Street.

SUMMARY: A group of local investors, incorporated as Invest Lynchburg, LLC, have offered to purchase four City owned lots on Jefferson Street for the purpose of development. The agreement provides that the purchase price shall be the assessed value of the property prior to July 1, 2005, \$43,900, provided the value of the improvements equal at least ten (10) times the current assessed value of \$201,300 and that they be constructed within three (3) years of exercise of the option. The entire option agreement is attached for reference.

This agreement provides an opportunity for the privately funded construction of a new building or buildings downtown, something that has not happened for quite some time. Accordingly, it represents a significant milestone in downtown redevelopment efforts.

PRIOR ACTION(S): None

FISCAL IMPACT: \$43,900 from the sale of the property plus real property tax revenue from improvements valued in excess of \$2 million.

CONTACT(S): Kimball Payne, 455-3990

ATTACHMENT(S): Option Agreement, graphics showing the properties

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED That the Council of the City of Lynchburg hereby determines that the City has no need for the City-owned property at 1117, 1201, 1215 and 1221 Jefferson Street, finds that the City's continued ownership of the property is not necessary, vacates the property for any public purpose and hereby approves the sale of the property to Invest Lynchburg, LLC, for \$43,900.

BE IT FURTHER RESOLVED That the City Manager is hereby authorized to execute the option agreement for the sale of the property.

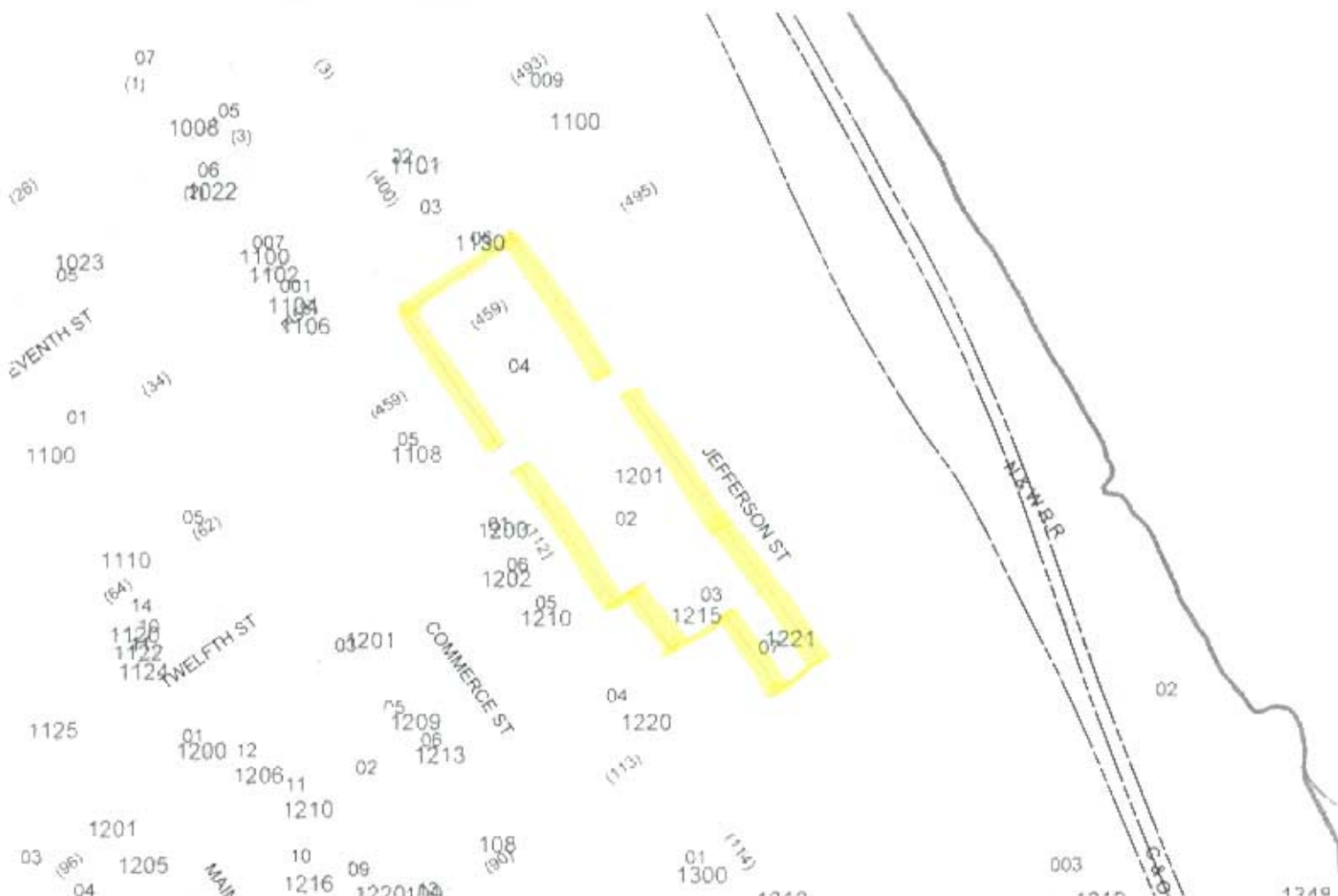
Introduced:

Adopted:

Certified:

Clerk of Council

141L



	2005	2004
04	L \$48,000	\$16,400
	I \$19,500	
	<u>\$67,500</u>	\$16,400
02	\$52,500	\$16,400
03	\$30,800	\$7,600
07	\$49,400	\$3,500
	<u>\$201,200</u>	<u>\$43,900</u>

OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT, made this 8th day of August, 2005, by and between THE CITY OF LYNCHBURG, hereinafter referred to as "Owner", whose business address is 900 Church Street, Lynchburg, Virginia 24504; and INVEST LYNCHBURG, LLC, hereinafter referred to as "Optionee", whose address is 901 Jefferson Street, Apartment 5- I, Lynchburg, VA 24504:

WITNESSETH:

WHEREAS, the Owner is the owner in fee simple absolute of the real property known locally as **1117, 1201, 1215 and 1221 Jefferson Street, Lynchburg, Virginia 24504** and designated on the Tax Valuation Map for the City of Lynchburg as **Tax Parcel Nos. 045-18-004, 046-03-002, 046-03-003 and 046-03-007**, together with all improvements thereon and all rights and appurtenances thereunto pertaining, all of which is hereinafter collectively referred to as the "Property."

WHEREAS, the Optionee desires to enter into this option agreement for the purchase of the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the parties agree and covenant as follows:

- (1) The Owner grants to the Optionee the sole and exclusive option to purchase the Property for eighteen months upon full execution of this document by all parties in consideration of the receipt an option fee of Five Thousand Dollars (\$5,000). The option fee shall be applied to the purchase price should the Optionee exercise this purchase option.
- (2) The purchase price for the Property shall be \$43,300 provided the value of the

Property with the Optionee's projected improvements per its development plan will be at least 10 times the current assessed value of \$201,300. The Optionee's development plan shall be submitted to the Owner, and the value of the Optionee's proposed improvements determined and agreed upon by the parties, within sixteen months following the execution of this option agreement by all parties. For the purposes of this option the value of proposed improvements may be determined by construction cost estimates. If the Optionee's improvements per its development plan are not completed within three years after the exercise of this option, the purchase price of the property will be re-negotiated, and may be as much as the current assessed value of the property at the time of transfer. Any consideration of the assessed value of the property for the purpose of negotiating the purchase price will be for land only. Any improvements made by the Optionee are not to be considered in determining the purchase price.

(3) The exercise of the option to purchase the Property shall be made by the Optionee by delivering written notice to Owner. The written notice shall be deemed to have been delivered to the Owner upon delivery of the same to the Owner's last known address by either certified mail, with return receipt requested, or by an overnight mail service.

If the Optionee does not exercise this option agreement on or before its expiration date, this option agreement shall be considered null, void and of no effect, unless the parties otherwise agree in writing.

(4) In the event the Optionee exercises this option, the following provisions shall govern the settlement:

- a. If the Optionee exercises the option, settlement shall occur within a reasonable period of time after notice is given to the Owner (but in no event later than 90 days after the date notice of exercise is given), at a date and time mutually agreeable to both the Owner and the Optionee. At settlement, the Owner shall deliver to the Optionee a deed, containing Special Warranty of Title, conveying fee simple title to the property to the Optionee. In addition, the Owner shall execute and deliver such other instruments and

documents as may be necessary and proper to vest in the Optionee full, legal, equitable and uncontested title to the Property. If any defects are found affecting marketability of title to the Property, the Owner shall be given a reasonable period of time within which to cure such defects and if such defects cannot be cured to the satisfaction of the Optionee and its legal counsel, the option shall become null and void and of no further effect whatsoever, in which event the Option Fee shall be refunded to the Optionee.

b. At settlement the Owner shall give and the Optionee shall take possession of the Property.

c. The risk of loss by fire or other casualty is assumed by Owner until settlement.

d. The Owner hereby makes the following warranties and representations which shall be effective as of the date of the settlement:

(1) There are no leases applicable to the Property or tenants in possession of the Property other than those leasehold interests and tenants in possession that are acceptable to the Optionee.

(2) The Owner has paid for all work, labor and materials furnished to the Property prior to the recording of the deed, and there will be no mechanic's liens and/or the right of any person to file a mechanic's lien against the Property for any reason whatsoever.

e. Settlement shall take place at a mutually acceptable location.

f. Owner shall pay the expense of preparing the deed and any recordation tax applicable to Owner as a grantor. Except as otherwise

agreed herein, all other expenses incurred by Optionee in connection with the settlement, including, but not limited to, title examination, insurance premiums, survey costs, engineering and other study costs, recording costs and the fees of the Optionee's attorney shall be borne by Optionee.

g. The parties hereby represent to each other that no real estate agent or broker was involved in this transaction with the exception of Donald G. Pendleton, Consensus Real Estate Services, LLC P.O. Box 146, Lynchburg, Virginia 24505. All claims for commissions or fees by Donald G. Pendleton and/or Consensus Real Estate Services shall be paid by the Optionee and the Optionee shall hold the Owner harmless from any claim for a commission by any real estate agent or broker by reason of any action on the part of the Optionee.

h. All rents, if any, deposits, utilities, assessments, real estate taxes and personal property taxes shall be pro-rated at the day of settlement.

i. On or before the settlement date, the Owner shall remove, at the expense of the Owner, all tangible personal property of the Owner, (except such tangible personal property that may, by mutual agreement, remain on the premises beyond the settlement date), and shall deliver possession of the Property reasonably free of debris and trash.

j. The provisions contained in this option agreement shall not merge with the deed conveying the Property, but shall survive the execution and delivery of the deed.

(5) The Owner hereby grants to the Optionee, and the agents, employees and assigns of the Optionee, permission to go on and in the Property at all reasonable times prior to the settlement date for the purpose of conducting any and all surveys, inspections and tests deemed necessary or appropriate by the Optionee. The Owner further grants

permission to the Optionee, and the agents, employees and assigns of the Optionee, to take samples of materials from the Property for testing purposes and all areas disturbed by such sampling shall be returned to as nearly the same condition as existed prior to the sampling.

(6) The Owner and the Optionee shall cooperate in the design and construction of the Bluffwalk and Overlook Terrace (Twelfth Street Right of Way) as described in the 2000 Downtown and Riverfront Master Plan. The Optionee agrees to provide such real property as the Owner requires in order to develop these improvements. Within sixteen months following the execution of this option agreement by all parties, the owner shall determine and provide to the Optionee the extent of the land required for the construction of the Bluffwalk and Overlook Terrace. Should the amount of real property required by the owner for these purposes render the Optionee's development plan unfeasible in the Optionee's sole discretion, the obligations of the Optionee hereunder shall be extinguished and the Option fee identified in Paragraph 1 shall be returned to the Optionee.

(7) Notices and other correspondence regarding this option agreement shall be delivered to the following addresses, or to such other additional addresses as the parties may designate in writing:

OWNER:

City of Lynchburg
L. Kimball Payne
City Manager
900 Church Street
Lynchburg, Virginia 24504

OPTIONEE:

Invest Lynchburg, LLC

901 Jefferson Street, Apartment 5-1
Lynchburg, VA 24504
Attention: Charles J. Catalano, MD

WITH A COPY TO:

Donald G. Pendleton, Broker
Consensus Real Estate Services
P.O. Box 146
Lynchburg, Virginia 24505

(8) This option agreement may not be assigned to third parties by the Optionee without the Owner's written consent. Such consent to assignment shall not be unreasonably withheld by the Owner.

(9) This agreement represents the entire understanding between the parties and there are no collateral or oral agreements or understandings, and this agreement shall not be modified unless in writing of equal formality signed by both parties.

(10) This agreement shall be construed according to the laws of the Commonwealth of Virginia.

(11) This option to purchase agreement is conditioned upon the approval of the sale of the property described herein by the Lynchburg City Council as required by Section 15.2-1800 of the Code of Virginia.

OWNER:

City of Lynchburg

By

Its

OPTIONEE:

Invest Lynchburg, LLC

By



Its

PRESIDENT

STATE OF VIRGINIA,
CITY OF LYNCHBURG,

To-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, Owner.

My commission expires _____

Notary Public

STATE OF VIRGINIA
CITY OF LYNCHBURG,

To-wit:

The foregoing instrument was acknowledged before me this 5th day of October, 2005, by Charles & Catalina, Optionee.

My commission expires _____ My Commission Expires April 30, 2007

Joanette M. Lurak
Notary Public

